

Climate Lawsuits and the Justiciability of the Right to a Clean and Healthy Environment: Trends in Judicial Practice in Indonesia

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ABSTRACT

This study examines the development of climate litigation in Indonesia and its implications for the justiciability of the right to a clean and healthy environment. Using a normative legal approach, the research analyzes constitutional provisions, statutory regulations, and judicial decisions to evaluate how Indonesian courts interpret and enforce environmental rights in the context of climate change. The study finds that although the right to a clean and healthy environment is explicitly recognized in Article 28H(1) of the Constitution of the Republic of Indonesia 1945 and further supported by environmental legislation, its judicial enforcement remains inconsistent. Key challenges include limitations in legal standing, difficulties in establishing causation, and judicial reluctance to intervene in policy-related matters. Nevertheless, emerging judicial trends indicate a gradual shift toward more progressive interpretations, including the application of precautionary principles and broader recognition of environmental harm. This study concludes that strengthening legal frameworks, enhancing judicial capacity, and integrating climate-specific norms are essential to improving the enforceability of environmental rights. The findings contribute to the discourse on environmental constitutionalism and climate justice, particularly in developing country contexts.

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1. INTRODUCTION

Climate change has become a critical global challenge, threatening ecosystems, human health, and socio-economic stability, with particularly severe impacts in developing countries like Indonesia. Factors such as environmental degradation, rapid industrialization, and weak regulatory enforcement exacerbate the nation's climate vulnerability, manifesting in rising sea levels, extreme weather events, deforestation, and air

pollution. This has heightened public concern over environmental protection and increasingly prompted legal systems to address climate-related harms and safeguard environmental rights. A key development in recent years is the rise of climate litigation, where individuals and organizations use lawsuits to hold governments and corporations accountable for climate change. These legal actions now often involve broader constitutional and human rights claims,

especially the right to a clean and healthy environment, which is constitutionally protected in Indonesia under Article 28H(1) of the 1945 Constitution.

Climate change poses significant challenges in Indonesia, exacerbated by environmental degradation and weak regulatory enforcement. The rise of climate litigation reflects a growing public concern for environmental protection, with individuals and organizations increasingly holding governments accountable for climate-related harms. This legal movement is particularly relevant in Indonesia, where the right to a clean and healthy environment is constitutionally protected under Article 28H(1) of the 1945 Constitution. Between 2010 and 2020, Indonesia saw 112 climate-related litigation cases, indicating a burgeoning legal response to climate issues (Sulistiawati, 2023). These cases span various legal domains, including civil and criminal law, highlighting the multifaceted nature of climate litigation [1]. Indonesia has established a comprehensive legal framework aligned with international commitments, yet enforcement remains weak due to institutional fragmentation and low compliance rates [2]. Civil society plays a crucial role in bridging enforcement gaps, advocating for stronger legal protections and public participation in environmental governance (Kesek, 2025). Vulnerable communities, including indigenous peoples and coastal populations, face disproportionate impacts from climate change, yet existing legal protections are inadequate [3], [4]. There is a pressing need for inclusive legal reforms that integrate human rights and environmental justice principles to better protect these communities [3].

Despite the constitutional guarantee of environmental rights, the enforcement of these rights through judicial mechanisms in

Indonesia faces critical challenges related to justiciability, which includes considerations such as legal standing, justiciable controversy, and judicial intervention. Climate change presents unique challenges to traditional legal doctrines, including issues of causation, diffuse harm, and the global scale of environmental impacts, often leading courts to adopt cautious or inconsistent approaches. Legal standing remains a barrier, as courts often require plaintiffs to demonstrate direct harm, limiting public interest litigation [5]. Justiciable controversies are complicated by the global nature of climate change, making it difficult for courts to adjudicate cases effectively [6].

While Indonesia has made progress with several landmark environmental cases recognizing harm and holding state actors accountable, climate-specific litigation remains underdeveloped compared to other jurisdictions. A total of 112 climate-related cases were documented, primarily focusing on forestry and forest fires, indicating a growing recognition of climate issues in legal discourse [7]. Legal barriers, such as procedural constraints, limited access to justice, and the lack of comprehensive climate legislation, continue to hinder the effectiveness of judicial remedies. However, growing public awareness and activism are pushing the boundaries of legal interpretation, expanding the scope of environmental rights litigation [2], [8].

This study aims to analyze the justiciability of the right to a clean and healthy environment within the framework of climate litigation in Indonesia. Using a normative legal approach, the research examines relevant constitutional provisions, statutory regulations, and judicial decisions to identify trends in judicial practice. The study seeks to answer key questions regarding how Indonesian courts interpret environmental

rights in climate-related cases, the legal challenges in establishing justiciability, and the judiciary's contribution to the broader climate governance framework. By exploring these issues, this paper contributes to the growing body of literature on environmental constitutionalism and climate justice, providing insights into the evolving role of courts in addressing complex environmental challenges. It highlights the need for stronger legal frameworks and judicial innovation, emphasizing the importance of aligning legal institutions with environmental sustainability goals to ensure the right to a clean and healthy environment is not merely declarative but effectively enforceable in the face of climate change.

2. LITERATURE REVIEW

2.1 *Climate Litigation: Concept and Global Development*

Climate litigation has emerged as a pivotal mechanism for enforcing environmental accountability and addressing climate change impacts, evolving from traditional environmental disputes to include human rights and intergenerational justice. Landmark cases, such as *Urgenda Foundation v. State of the Netherlands*, highlight how courts compel governments to strengthen climate measures by framing climate change as a violation of fundamental rights, reinforcing the justiciability of climate issues [9]. This shift enables courts to hold states accountable for unmet climate obligations, redefine legal concepts like duty of care and corporate responsibility, and

influence public policy, thereby shaping climate governance. However, climate litigation in developing countries faces challenges, including socio-economic inequality and governance capacity, where judicial interpretation is crucial [10]. Additionally, structural limitations such as weak legal frameworks and procedural challenges hinder effective climate litigation in these regions [11].

2.2 *The Right to a Clean and Healthy Environment*

The recognition of the right to a clean and healthy environment in Indonesia, enshrined in Article 28H(1) of the 1945 Constitution, marks a significant step in integrating environmental protection into constitutional law. However, the effectiveness of this right depends on its enforceability, which faces various challenges. Article 28H(1) explicitly guarantees the right to a good and healthy environment, establishing a legal foundation for environmental litigation [12], while Law No. 32 of 2009 on Environmental Protection and Management further reinforces this right with detailed enforcement mechanisms [13]. Despite these legal frameworks, weak enforcement, lack of coordination among government agencies, public compliance issues, and inadequate waste management infrastructure particularly in tourism areas like

Bali exacerbate environmental degradation [14]. The realization of environmental rights also depends on judicial willingness to interpret and enforce them, making justiciability a critical factor [12], [15]. Additionally, community involvement and awareness are essential for improving the effectiveness of environmental law enforcement [16].

2.3 *Justiciability in Environmental and Climate Law*

Justiciability in climate change litigation presents significant challenges due to the complex nature of climate issues, which often leads courts to view these cases as political rather than judicial matters. Barriers to justiciability include standing limitations, difficulties in establishing causation, and concerns over judicial overreach. Many climate-related claims involve large populations, making it hard for individuals to demonstrate standing, as courts typically require specific harm, which is difficult to establish when the impacts of climate change are diffuse and cumulative [17]. Additionally, establishing a direct causal link between emissions and climate harm is challenging due to the global nature of greenhouse gas emissions, with courts struggling to assess cumulative and indirect impacts, complicating the accountability of specific entities [18]. Finally, concerns about judicial

overreach arise as courts hesitate to mandate broad policy changes, fearing they may infringe upon the roles of legislative and executive branches, with many judges deferring to elected officials on specific mitigation actions [10].

2.4 *Judicial Practice and Environmental Litigation in Indonesia*

The development of environmental litigation in Indonesia reflects a growing recognition of environmental rights and responsibilities, with courts increasingly addressing cases related to forest fires, pollution, and land disputes, signaling a shift towards acknowledging environmental harm and promoting accountability among state and private actors. However, challenges such as inconsistent legal interpretations, procedural barriers, and limited judicial expertise continue to hinder effective enforcement. Climate-specific litigation remains limited, focusing more on immediate environmental damage rather than long-term climate impacts, while institutional fragmentation and limited enforcement capacity further weaken the implementation of climate-related laws [2]. Despite these challenges, there are signs of progressive judicial trends, with courts increasingly recognizing the importance of environmental protection and issuing decisions

that promote accountability [5]. The rise of public interest litigation in Indonesia has expanded the recognition of legally acknowledged harms and shifted towards restorative remedies, indicating a growing public interest dimension in civil cases [5]. Nevertheless, the effectiveness of environmental law implementation is limited by weak supervision, strict sanctions, and low public awareness [4], [19], and while civil society plays a vital role in bridging enforcement gaps, challenges remain in ensuring judicial independence and equitable access to justice [2].

2.5 Research Gap and Theoretical Contribution

Although existing literature has extensively examined climate litigation and environmental rights at the global level, there is still a limited focus on the intersection between climate lawsuits and the justiciability of environmental rights in Indonesia. Most studies tend to analyze environmental law from a regulatory or policy perspective, without fully exploring how courts interpret and apply these norms in climate-related cases. This study seeks to fill this gap by providing a normative legal analysis of judicial practice in Indonesia, specifically focusing on how courts address the justiciability of the right to a clean and healthy environment in the context of climate litigation.

By integrating concepts from environmental constitutionalism, human rights law, and climate governance, this research offers a comprehensive understanding of the evolving role of the judiciary. Furthermore, it contributes to the broader discourse on climate justice by highlighting the importance of legal institutions in ensuring environmental protection. It emphasizes that the realization of environmental rights depends not only on legal recognition but also on effective judicial enforcement, providing both theoretical and practical insights into strengthening climate litigation and advancing environmental governance in Indonesia.

3. METHODS

3.1 Research Approach

This study employs a normative legal research approach (doctrinal legal research), which focuses on the analysis of legal norms, principles, and doctrines governing climate litigation and environmental rights. The normative approach is appropriate because the research aims to examine the justiciability of the right to a clean and healthy environment within the framework of existing legal provisions and judicial interpretations. Rather than relying on empirical field data, this study emphasizes the interpretation and systematic analysis of legal materials to understand how environmental rights are constructed and enforced in Indonesia.

The research adopts a statute approach, a conceptual approach, and a case

approach. The statute approach is used to analyze relevant constitutional and legislative frameworks regulating environmental protection and climate governance. The conceptual approach explores key legal concepts such as justiciability, environmental constitutionalism, and climate justice. Meanwhile, the case approach examines judicial decisions related to environmental and climate disputes to identify trends in judicial reasoning and practice.

3.2 Types and Sources of Legal Materials

The study utilizes three categories of legal materials: primary, secondary, and tertiary. Primary legal materials include binding legal sources such as the Constitution of the Republic of Indonesia 1945, particularly Article 28H paragraph (1) concerning the right to a good and healthy environment, Law No. 32 of 2009 on Environmental Protection and Management, and other relevant regulations related to climate change and environmental governance. Judicial decisions from Indonesian courts concerning environmental disputes and climate-related issues are also analyzed to assess judicial interpretation and application of the law. Secondary legal materials consist of scholarly literature, such as books, journal articles, and research reports on climate litigation, environmental rights, and legal theory, which support legal analysis, provide theoretical frameworks, and contextualize the study within broader academic discourse. Tertiary legal materials, including legal dictionaries, encyclopedias, and official legal databases, are used to clarify legal terminology and support the interpretation of legal concepts.

3.3 Data Collection Techniques

The collection of legal materials is conducted through a library research method.

This involves systematically identifying, selecting, and reviewing relevant legal documents and academic literature. Legislative documents are obtained from official government publications and legal databases, while judicial decisions are sourced from court records and authorized legal repositories. Academic references are collected from reputable journals, books, and online databases to ensure the credibility and relevance of the materials. The data collection process is carried out in stages, beginning with the identification of key legal issues related to climate litigation and environmental rights. This is followed by the classification of legal materials based on their relevance and authority. Finally, the selected materials are organized to facilitate comprehensive legal analysis.

3.4 Data Analysis Techniques

The analysis of legal materials is conducted qualitatively using descriptive, analytical, and prescriptive methods. The descriptive method presents and explains the existing legal framework governing environmental rights and climate litigation in Indonesia, outlining relevant constitutional provisions, statutory regulations, and judicial decisions. The analytical method examines the consistency, coherence, and effectiveness of legal norms and judicial practices, identifying legal issues related to justiciability, such as standing, causation, and judicial authority, and evaluating how courts address these issues in practice. The prescriptive method formulates legal arguments and recommendations to improve the justiciability of environmental rights in Indonesia, proposing legal interpretations and policy directions to strengthen judicial enforcement and enhance climate governance.

4. RESULTS AND DISCUSSION

4.1 Normative Framework of the Right to a Clean and Healthy Environment in Indonesia

The right to a clean and healthy environment in Indonesia is firmly grounded in constitutional and statutory provisions. Article 28H paragraph (1) of the Constitution of the Republic of Indonesia 1945 explicitly guarantees that every person has the right to live in a good and healthy environment. This provision reflects the integration of environmental protection within the broader framework of human rights, positioning environmental quality as an essential component of human dignity and welfare.

At the statutory level, Law No. 32 of 2009 on Environmental Protection and Management further elaborates this constitutional mandate by establishing the principles of sustainable development, environmental justice, and state responsibility. The law recognizes the rights of citizens to access environmental information, participate in environmental decision-making, and seek legal remedies for environmental harm. These provisions collectively form a robust normative framework that, in theory, supports the justiciability of environmental rights. The law enshrines citizens' rights to engage actively in decision-making processes and aims to ensure justice for current and future generations by addressing environmental degradation and promoting equitable resource management [13], [20], [21].

Despite this strong legal foundation, the practical realization of these rights depends heavily on judicial interpretation and enforcement. The gap between normative recognition and effective implementation becomes particularly evident in the context of climate-related disputes, where legal frameworks often lack specificity, and courts

must navigate complex scientific and policy considerations. Moreover, while the law emphasizes sustainable development principles, including the precautionary principle and intergenerational justice, its enforcement is hindered by challenges such as inadequate implementation mechanisms and the need for revisions to strengthen legal norms and enhance enforcement [13], [22].

4.2 Development of Climate Litigation in Indonesia

Climate litigation in Indonesia is still in its early stages compared to global trends, yet it shows a gradual evolution. Most environmental cases brought before Indonesian courts have traditionally focused on issues such as forest fires, land degradation, pollution, and natural resource exploitation. These cases often involve claims against government agencies or corporations for failing to prevent environmental harm. While many cases do not explicitly label themselves as climate lawsuits, they inherently address climate-related concerns, particularly through the lens of public interest litigation. This gradual shift is marked by increased engagement from civil society organizations and activists who leverage legal frameworks to advocate for stronger environmental governance.

Between 2010 and 2020, 112 cases explicitly referencing climate change were identified in Indonesia, highlighting a growing recognition of climate issues in legal discourse [1]. A significant trend has been the rise of public interest litigation, which seeks to address broader societal concerns rather than individual grievances [5]. These cases often implicate government and corporate accountability for environmental degradation, particularly in relation to deforestation and peatland fires, which contribute significantly to greenhouse gas

emissions. Civil society organizations have increasingly used litigation as a tool to push for compliance with international commitments like the Paris Agreement, empowering citizens to challenge government actions that contradict environmental regulations [23], [24].

The emergence of climate-related arguments in Indonesian courts indicates a growing awareness of climate change as a legal issue. However, the absence of comprehensive climate-specific legislation often forces litigants to rely on general environmental laws and constitutional provisions, which creates both opportunities and challenges. While this situation allows for flexible legal interpretation, it may also limit the clarity and consistency of judicial decisions, making the role of civil society and activism crucial in pushing for stronger environmental governance and accountability.

4.3 Justiciability Challenges in Climate-Related Cases

One of the central issues in climate litigation is the question of justiciability, which determines whether a case can be effectively adjudicated by the courts. In Indonesia, several key challenges affect the justiciability of climate-related claims, particularly regarding legal standing (*locus standi*). While Indonesian law allows individuals and organizations to file lawsuits, courts often apply inconsistent standards, hindering access to justice for communities affected by climate change. This inconsistency is further compounded by the lack of a comprehensive legal framework specifically addressing climate change, leading to difficulties in proving direct harm and causality in claims.

Legal standing remains a significant barrier, as courts frequently impose varying

standards for determining who has sufficient interest to bring a claim. Vulnerable communities, such as indigenous peoples and coastal populations, often struggle to demonstrate direct harm, which is essential for legal standing [2]. Furthermore, Indonesia lacks a singular law explicitly addressing climate change, resulting in fragmented legal protections [8]. Existing environmental laws are often sectoral and do not fully integrate principles of environmental justice, leaving gaps in legal protection [3].

The separation of powers doctrine also influences judicial attitudes toward climate litigation, with courts sometimes reluctant to issue decisions that require significant policy changes, viewing such matters as the responsibility of the executive or legislative branches. This cautious approach can restrict the scope of judicial intervention, even in cases where environmental harm is evident. Despite these challenges, there are signs of progress. Indonesian courts have shown increasing willingness to engage with environmental issues and, in some cases, have adopted more flexible interpretations of standing and evidence. This trend suggests a gradual shift toward greater judicial openness in addressing complex environmental disputes.

4.4 Judicial Trends in Interpreting Environmental Rights

An analysis of judicial practice in Indonesia reveals evolving trends in the interpretation of environmental rights. Courts have increasingly recognized the importance of environmental protection and have, in several cases, affirmed the responsibility of the state to safeguard environmental quality. This reflects a broader movement toward environmental constitutionalism, where courts play an active role in enforcing environmental rights. In some decisions,

judges have adopted a progressive approach by emphasizing the preventive and precautionary principles, which are central to environmental law. These principles allow courts to act even in situations where scientific certainty is not absolute, thereby addressing the inherent uncertainties of climate change. Such approaches enhance the justiciability of environmental rights by lowering evidentiary barriers and prioritizing environmental protection.

The increasing recognition of environmental protection as a constitutional right reflects a global trend towards environmental constitutionalism, where courts actively enforce environmental rights. This movement is characterized by the adoption of preventive and precautionary principles, allowing courts to address environmental issues even amidst scientific uncertainties. Such judicial activism enhances the justiciability of environmental rights by lowering evidentiary barriers and prioritizing environmental protection. This approach is evident in various jurisdictions, including India, where constitutional provisions have been interpreted to support environmental protection, and landmark cases have reinforced this perspective [25], [26]. The Urgenda Climate Case in the Netherlands serves as a global precedent, demonstrating how courts can compel governments to take action on climate change [25].

Despite the progress, challenges such as weak enforcement mechanisms and political resistance persist, hindering the full realization of environmental constitutionalism [26]. The global influence of rights-based climate litigation is evident, with courts in different jurisdictions learning from each other and strengthening environmental protection through shared legal reasoning. However, judicial practice remains inconsistent. While some courts demonstrate

a proactive stance, others adhere to more conservative interpretations that limit the scope of environmental claims. This inconsistency highlights the need for clearer legal standards and greater judicial capacity in handling complex environmental and climate-related cases.

4.5 Implications for Climate Justice and Environmental Governance

The interaction between climate litigation and the justiciability of environmental rights has significant implications for climate justice in Indonesia. Climate justice emphasizes fairness in the distribution of environmental benefits and burdens, as well as the protection of vulnerable communities disproportionately affected by climate change. The findings of this study indicate that while the legal framework in Indonesia provides a strong foundation for environmental rights, its effectiveness depends on the ability of courts to translate these norms into enforceable decisions. Strengthening justiciability is therefore essential to ensuring that environmental rights are not merely symbolic but have practical impact.

Improving judicial capacity, developing clearer legal standards, and enhancing access to justice are key steps toward achieving this goal. In addition, the integration of climate-specific considerations into legal frameworks can provide greater clarity and support more consistent judicial decisions. Ultimately, the role of the judiciary is crucial in bridging the gap between legal norms and environmental realities. By actively engaging with climate-related issues, courts can contribute to more effective environmental governance and support Indonesia's efforts to address climate change. This underscores the importance of continued legal development and institutional

strengthening in advancing the right to a clean and healthy environment.

5. CONCLUSION

This study demonstrates that the right to a clean and healthy environment in Indonesia possesses a strong normative foundation, particularly through constitutional recognition and supporting environmental legislation. However, the transition from normative recognition to effective judicial enforcement remains a significant challenge. The analysis shows that climate litigation in Indonesia is still developing and often embedded within broader environmental disputes, rather than explicitly framed as climate-specific cases. The issue of justiciability emerges as a central barrier in realizing environmental rights through the judiciary. Challenges related to legal standing, causation, and the separation of powers continue to limit the effectiveness of climate-related claims. Courts tend to adopt cautious approaches, especially when cases involve complex scientific evidence or require policy-level interventions, leading to

inconsistent judicial outcomes based on varying interpretations of environmental norms.

Despite these limitations, there are clear indications of progressive developments in judicial practice. Some courts have begun to adopt more flexible approaches, incorporating principles such as precaution and environmental protection as fundamental considerations. This shift suggests that the judiciary is gradually evolving toward a more active role in addressing environmental and climate-related issues. In conclusion, strengthening the justiciability of environmental rights in Indonesia requires a multi-dimensional approach, including improving legal clarity, developing climate-specific regulations, enhancing judicial competence, and ensuring broader access to justice. By addressing these challenges, the legal system can better support climate governance and contribute to the realization of environmental justice. Ultimately, the effectiveness of environmental rights depends not only on their recognition in law but also on the willingness and capacity of courts to enforce them in practice.

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